



INTERSTATE WATER MARKETING

Existing Policy:

#31. The risk of losing the protection of the Colorado River Compacts is too high without a favorable interpretation by the United States Supreme Court on interstate water marketing, or favorable legislation by Congress on water marketing, the Board is opposed to interstate water marketing at this time.

PROPOSED Policy Statements:

The Colorado River District opposes any proposal to market Compact allocations of Colorado River water between states of the Upper and Lower Basins without the unanimous consent of all seven states. Any non-consensual proposal to market water between basins would represent an abrogation of the 1922 Compact.

The Colorado River Compacts of 1922 and 1948 protect Colorado from downstream states claiming prior (senior) use that would preclude Colorado's eventual development of its full entitlement. Accordingly, the compacts must be protected or defended from legal challenge or amendment unless all seven basin states agree to the terms of a proposed change.

Background: The State of Colorado is signatory to the 1922 Colorado River Compact and the 1948 Upper Colorado River Basin Compact. The 1922 and 1948 compacts, along with the 1944 International Treaty with Mexico, a number of other federal laws, and United States Supreme Court decisions comprise the "Law of the River." The diversion of Colorado River water for consumptive beneficial uses within the State of Colorado is subject to, and limited by, provisions of the Law of the River.

The primary purposes of both compacts is to provide legal certainty regarding how much water each state can develop, to allow states to develop their water resources when the water is needed, and to preclude the interstate application of the prior appropriation doctrine. These, and other, benefits of the compacts outweigh any short-term benefit that may accrue to one state from interstate marketing of its Compact-allocated water.

Periodically, individuals in Colorado have proposed Colorado water development projects which provide a portion or all of its water to lower basin states permanently or for a defined period of time. The most recent was the proposed Roan Creek Project. This project, to be located near DeBeque, PROPOSED TO PERFECT CHEVRON OIL'S CONDITIONAL WATER RIGHTS INTENDED FOR OIL SHALE PRODUCTION AND LEASE THE WATER TO LAS VEGAS FOR 50 YEARS OR UNTIL SUCH TIME AS CHEVRON REQUIRED THE WATER FOR LOCAL USE.

Additionally, Utah has historically proposed selling a portion Compact entitlement to lower basin interests through a binding commitment to forego development of a specified portion of its

entitlement, in essence transferring a portion of its entitlement for lower basin states to develop.

Under most interpretations of the compacts, the Upper Basin States do not have a clearly quantified allocation. Therefore, one Upper Basin state selling a portion of its unquantified entitlement is problematic, at best. At worst, it introduces Lower Basin interests into any eventual resolution of ambiguities in the 1948 Upper Basin Compact and changes allegiances within the Upper Basin when negotiating ambiguities in the 1922 Compact.

Adopted _____, 2005

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